

REMARKS

Claims 1 and 3-16 are pending in the application. Claims 4-8 and 10-15 are withdrawn by the Examiner.

Rejection under 35 U.S.C. 112, first paragraph as regards written description

The Examiner rejects claims 1, 3 and 9 under 35 U.S.C. 112, first paragraph as not meeting the written description requirement of the patent statute. The rationale provided is that only one species of troponin fragment is exemplified and no particular function for the fragment is set forth in the specification. Moreover, the prior art allegedly provides at least three possible sequences of human cardiac troponin I having 210, 209 and 226 amino acids.

In response, and in the interest of advancing prosecution and securing rapid allowance of a patent, Applicants herein change claim 1 to refer to SEQ ID NO:2 as the N-terminus of the intended troponin. It is abundantly clear from the specification that the cardiac troponin intended is the 210 amino acid sequence referred to in U.S. Serial No. 08/993,380 that is incorporated by reference in the instant specification. Moreover, the specification refers to only a small number of troponin fragments within the scope of the claims, i.e. only those having about 95-115 amino acids. As the number of species within the scope of the genus is relatively small when reference is made to the troponin 210 amino acid sequence, surely proper description is found.

Rejection under 35 U.S.C. 102

The Examiner rejects claims 1, 3 and 9 under 35 U.S.C. 102(b) as anticipated by Morjana *et al.*, WO 97/19955, alleging that the reference teaches a sequence having 99.7% homology to SEQ ID NO:2 but also having other amino acids.

The Examiner rejects claims 1 and 9 under 35 U.S.C. 102(b) as anticipated by Moses *et al.*, WO 97/30085, alleging that the reference teaches an isolated polypeptide consisting essentially of an N-terminal fragment of human cardiac troponin I.

The Examiner rejects claims 1, 3 and 16 under 35 U.S.C. 102(e) as anticipated by Potter *et al.*, WO 97/39132, alleging that the reference teaches sequence SEQ ID NO:2 but also having other amino acids.

In the interest of advancing prosecution and securing rapid issuance of a patent, Applicants herein change “consisting essentially of” to “consisting of.” Applicants believe that the Examiner is applying a very liberal definition of “consisting essentially of.” Applicants herein introduce the more restrictive “consisting of” thereby limiting the sequence claimed to exclude anything beyond the 95-115 amino acid fragment. This change to the claim language even more clearly distinguishes the presently claimed invention from these cited references.

Claim objections

The Examiner correctly notes that claim 3 should be made dependent upon claim 1 as claim 2 is now cancelled. Applicants herein correct the unintentional error.

Rejection under 35 U.S.C. 112, second paragraph

The Examiner maintains that “depicted” in claim 16 renders the claim unclear. Applicants herein change the claim to recite “having” as suggested by the Examiner, thereby obviating the rejection.

Fees

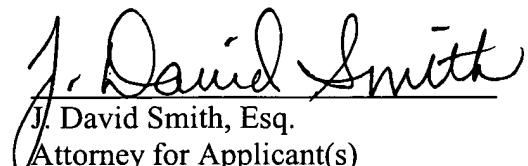
No fees other than the extension fee enclosed herewith are believed to be necessitated by the instant response. However, should this be in error, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or to credit any overpayments.

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1112-1-052CON

CONCLUSION

Entry of the foregoing reply into the record is respectfully requested. An early allowance is earnestly sought.

Respectfully submitted,


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